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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No. .....

SGT. JESSE E. SNAPP,
Petitioner,

vs.

HONORABLE W. D. NEAL, State Auditor, and HONORABLE JOE T. PATTERSON, Attorney General, both of the State of Mississippi,
Respondents.

RESPONSE OF RESPONDENTS TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Respondents, W. D. Neal, former State Auditor, and Joe T. Patterson, Attorney General of Mississippi, respond hereto to the Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi as they have been requested to do by the Court.

The citation of opinion below and the jurisdiction of the Court are not questioned. However, the petitioner does not state the questions presented as they are shown by the statutes and case involved herein.

A material variance appears as the last clause of the circumstances set forth in question numbered 1, as follows:

". . . has never moved or used the state highways during the taxable year." Since the first two questions presented by petitioner are dependent upon that misstatement, we feel compelled to point out wherein it is a misstatement. The Mississippi statutes and the statutes of South Carolina bearing upon the issues provide for the registration of motor vehicles in advance and there is no way of knowing whether a house trailer will or will not be moved or used on state highways during the taxable year until after the taxes have become due and payable thereon. Certainly the record in this case does not support petitioner's statement. The record in the case for refund was completely made and the case was pending long before the end of the year for which the taxes were paid.

The portions of the Mississippi statutes, *Ch. 588, Miss. Gen. Laws of 1958, §§10007-01, et seq., Miss. Code of 1942, Recp., and Ch. 535, Miss. Gen. Laws of 1962, §§10007-51, et seq., Miss. Code of 1942, Recp.,* deemed pertinent to the disposition of this matter are set forth as Appendix "A" and "B" hereto.

The third and fourth questions presented by petitioner are equally misleading for the reasons that:

(1) The state of petitioner's domicile does require registration of house trailers, both mobile and stationary, and the payment of all taxes due thereon is a prerequisite to such registration, and (2) the opinion of the Supreme Court of Mississippi clearly recognizes that *Dameron* v. *Brodhead,* 345 U.S. 322, bars the imposition of taxes upon property of servicemen, other than motor vehicles, by any state, except that of the serviceman's domicile (Pet. Br. p. 26).

For the reasons stated above, respondents present herewith the questions presented by the record.

QUESTIONS PRESENTED

1. Is the petitioner, solely by reason of his being a member of the armed forces of the United States, immuned from registering his motor vehicle (house trailer) under the laws of any state, or must he comply with the Act of Congress granting the immunity in order to claim the benefits of the federal statute?

2. Can petitioner continue to enjoy the privileges of a federal statute when he: (1) fails to comply with the provisions thereof by registering his motor vehicle (house trailer) in the state of his domicile, and (2) elects to fail and refuse to register the motor vehicle (house trailer) in the state where he and the motor vehicle (house trailer) are physically located under state statutes specifically recognizing the federal statute and granting to him an ad valorem tax exception?

ADDITIONAL FACT

In addition to the facts set forth in the Court opinion, adopted as a fair statement of the facts of the case by petitioner, there is one additional material fact shown in the Court opinion not detailed by petitioner.

That fact is that petitioner concedes that the house trailer in question is a house trailer as that term is defined by *Ch. 535, supra,* which is pari materia with *Ch. 588, supra* (Pet. Br. p. 29).

REASON FOR DENYING THE WRIT

Petitioner should not be heard to complain further when he deliberately failed and refused to register his house trailer under a Mississippi statute specifically granting to him an ad valorem tax exemption in recognition of the provisions of *50 U.S.C.A. App.*, §574, and when he has failed and refused to comply with the terms of that statute by registering his house trailer in the state in which he is domiciled.

ARGUMENT

The arguments advanced by petitioner are some of the same ones urged upon the Supreme Court of Mississippi and all lower tribunals. In each case they were courteously heard, carefully considered and forcefully rejected. Respondents submit that a careful review of the Court opinion (Pet. Br. pp. 21-40) will reveal that it is sound and supported by reason and authority.

The firm authority and clear logic of the opinion of the Supreme Court of Mississippi is adopted by these respondents. The following is made in addition thereto and supplementary thereto.

I.

The House Trailer in Question Is a Motor Vehicle for All Purposes of This Proceeding by the Clear Application of the Language of the Statutes Involved and by Petitioner's Own Admission

Petitioner concedes that the house trailer in question is a house trailer within the meaning of *Ch. 535, supra.*

This statute is pari materia with *Ch. 588, supra.* In fact, *Ch. 535, supra,* is supplementary of *Ch. 588, supra,* and the definitions and entire statutes are inter-related.

By *Ch. 535, supra,* a house trailer is defined:

> "(a) The term 'house trailer' shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or moved by motive power not its own, and which house trailer is not taxed under authority of Chapter 588, laws of 1958 [§§10007-01, et seq.]."

Ch. 588, supra, defines motor vehicle as follows:

> "(a) The term 'motor vehicle' shall mean any device and attachments supported by one or more wheels which is propelled or drawn by any power, other than muscular power, over the highways, streets, or alleys of this state."

This definition clearly includes house trailers. Thus, it is clearly seen that by petitioner's admission the house trailer in question is, in fact, a motor vehicle for all purposes of this proceeding.

Petitioner cannot, therefore, now be heard to contend that the house trailer is not a motor vehicle because his own statement of facts, written by his attorney, is contrary and opposed to his present position.

In addition thereto, by the failure of §574, *supra,* to attempt to define the meaning of the words "motor vehicle" the definitions as used by the states are controlling, *28 U.S.C.A., §1652.*

South Carolina's statutes dealing with house trailers are as clear as Mississippi's, and they clearly provide that a house trailer may or may not have motive power of its own, §*46-2* (*13*), and must be equipped for use as a conveyance on streets or highways §*46-35.3*. It is, also, clear that South Carolina requires such house trailers to be registered §§*46-35.3* and *46-100*, and that no license may be issued or registration completed until all taxes legally due thereon have been paid §*46-100.1*. All citations in this paragraph are from *10 Code of Laws of South Carolina 1962* (*1962 Supp.*) (Pet. Br. pp. 47-49).

II.

The House Trailer in Question Must Be Located Some Place for Tax Purposes

Petitioner does not deny that the statutes of South Carolina would require the registration of his house trailer in that state, if it was, in fact, physically located in that state.

He asserts that the statutes of South Carolina, in which he is domiciled, do not apply because the house trailer was, in fact, physically located in Mississippi during the taxing period.

While at the same time, he seeks to avoid the tax of Mississippi by invoking the provisions of §*574*, *supra*, which places the legal situs of the house trailer for tax purposes in South Carolina.

If the legal situs of the house trailer was South Carolina, it was located in South Carolina for tax purposes and should have been registered in that state under the provisions of §*46-35.3*, *supra*, or §*46-100*, *supra*. Since it was not physically in South Carolina and petitioner has

failed to comply with the requirements of the second paragraph of §574, *supra*, the house trailer is taxable where it is actually physically located.

Petitioner seeks to avoid the payment of taxes in Mississippi by reason of the provisions of §574, *supra*, while at the same time, he is seeking to have the provisions of §574, *supra*, held inoperative insofar as the state of his domicile is concerned.

We submit that petitioner's logic in this regard is wholly fallacious and should be rejected by this Court as was done by the Supreme Court of Mississippi. See *Whiting* v. *City of Portsmouth*, 202 Va. 609, 118 S.E.2d 505.

Dameron v. *Brodhead*, *supra*, relied upon so heavily by petitioner, did not hold that servicemen were immuned from the civic responsibility of payment of taxes.

Petitioner could have avoided the payment of the taxes paid under *Ch. 535*, *supra*, by registering his house trailer under *Ch. 588*, *supra*, which clearly exempts such motor vehicles from the payment of ad valorem taxes.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari to the Supreme Court of Mississippi should, it is submitted, be denied.

Respectfully submitted,

JOE T. PATTERSON,
Attorney General of Mississippi,
New Capitol Building,
Jackson, Mississippi,

By: .....,
MARTIN R. McLENDON,
Assistant Attorney General,
Attorneys for Respondents.

CERTIFICATE

I, Martin R. McLendon, hereby certify that a copy of the foregoing response to Petition for Writ of Certiorari has been mailed to Honorable Leon D. Hurbert, Jr., and Honorable Archibald Cox, at their regular post office addresses, by U. S. mail postage prepaid.

.....
MARTIN R. McLENDON.

APPENDIX A

§10007-02. **Purpose of Act.**

The purpose of this act is, with reference to assessing ad valorem taxes on motor vehicles which are operated upon the public highways of this state, to, (a) fix the taxable year, (b) fix the tax lien date, (c) determine the method of assessing, (d) fix the date for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the date of collecting such taxes.

SOURCE: Laws, 1958, ch. 588, §3.

§10007-03. **Definitions.**

The subject words and terms of this section for the purpose of this Act, shall have meanings as follows:

(a) The term "motor vehicle" shall mean any device and attachments supported by one or more wheels which is propelled or drawn by any power, other than muscular power, over the highways, streets, or alleys of this state.

* * *

§10007-04. **Who is liable for tax—time of payment—due date.**

Any person required by law to pay a road and bridge privilege license tax on any motor vehicle shall also be liable for the ad valorem taxes due on such motor vehicle, unless otherwise specifically exempt herein. Such ad valorem taxes due shall be paid at the same time the road and bridge privilege license tax is paid, and the payment of the said ad valorem taxes due shall be a prerequisite to the issuance of the said road and bridge privilege license.

The ad valorem tax lien date for the purpose of this act shall also constitute the ad valorem tax due date which shall also be the same date that the subject motor vehicle is purchased from a bona fide dealer, if it is intended that such motor vehicle is to be operated upon the highways of this state.

In all cases, however, where the time for complying with the road and bridge privilege tax law has been extended by law as to time of payment, then the same extension of time shall apply to the date on which the ad valorem taxes on such motor vehicle must be paid. Ad valorem taxes on all motor vehicles, defined in this act, shall be calculated as of the first day of the month in which such taxes were due, regardless of any extension of time for payment of such taxes as provided hereinabove.

SOURCE: Laws, 1958, ch. 588, §4.

§10007-05. **Taxable and fiscal years—taxes to be collected by county and municipal tax collectors—when to be paid.**

For the purpose of this act the taxable year and fiscal year shall commence each year on November first and shall end on October thirty-first of the following year, and such taxable year shall run concurrently with the taxable year now in effect in the law pertaining to the payment of the road and bridge privilege license tax on motor vehicles. Ad valorem taxes on motor vehicles shall be collected by the county tax collector for the county and state and by the municipal tax collector for the municipalities and municipal separate school districts. Ad valorem taxes for any ensuing year may be paid during the month of October, however, and said ad valorem taxes on any motor vehicle must be paid at the same time or prior to the time that the road and bridge privilege license is issued for the sub-

ject motor vehicle, unless herein otherwise specifically exempt from such ad valorem taxes.

In cases where the privilege tax is not due on a motor vehicle prior to November thirtieth then the ad valorem taxes due on such motor vehicle shall be calculated for only the proportional part of the taxable year remaining, prorated from the first day of the month on which said taxes are due.

SOURCE: Laws, 1958, ch. 588, §5.

§10007-21. **Exemptions and credits—penalty for violation of section.**

* * *

Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in this state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act.

* * *

APPENDIX B

§10007-51. **Purpose of Act.**

The purpose of this act is, with reference to assessing and collecting ad valorem taxes on house trailers, to (a) fix the taxable year, (b) fix the lien date, (c) determine the method of assessing, (d) fix the dates for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the dates for collecting such taxes.

SOURCE: Laws, 1962, ch. 535, §1.

§10007-52. **Definitions.**

The subject words and terms of this section, for the purposes of this act, shall have meanings as follows:

(a) The term "house trailer" shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or moved by motive power not its own, and which house trailer is not taxed under authority of chapter 588, laws of 1958 [§§10007-01, et seq.].

* * *

SOURCE: Laws, 1962, ch. 535, §2.

§10007-53. **Registration fee—report and payment—proration of tax.**

Any person owning, occupying, using, or having in his possession or control a house trailer shall, not later than

the last day of November each year, register such house trailer with the sheriff of the county in which it is located on such date. At the time such registration is made, and before a registration certificate and label may be issued, the said owner, occupant, user, possessor, or controller of said house trailer shall pay a registration fee of two dollars and fifty cents ($2.50) together with all ad valorem taxes due on said house trailer for the then fiscal year. Fifty cents (50¢) of this fee shall be retained by the sheriff, one dollar $1.00) shall be paid into the general county fund, and one dollar ($1.00) of this fee shall be forwarded to the tax commission to cover cost of labels, tax receipt forms, etc., as hereinafter provided.

* * *

§10007-54. **Taxable and fiscal year—tax lien dated—trailer brought into state.**

For the purpose of this act the taxable and fiscal year shall commence each year on November first and shall end on October thirty-first of the following calendar year. The tax lien date shall also be November first for a house trailer owned on that date.

The date of purchase of a house trailer during the fiscal year shall constitute the tax lien date for such vehicle and the ad valorem taxes will be calculated on a prorata basis.

A person bringing such a house trailer into this state, on which the taxes have already been paid in another state, shall be allowed thirty (30) days in which to pay the tax in this state.

SOURCE: Laws, 1962, Ch. 535, §4.

§10007-58. **Exemptions.**

(a) House trailers which are already taxed under authority of chapter 588, laws of 1958 [§§10007-01, et seq.], are exempt from the taxes authorized by this act.

* * *